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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

17 CR 548 (PAC)

6 JOSHUA ADAM SCHULTE,

7 Defendant.
-----x

8 New York, N.Y.
9 January 24, 2020
10 10:45 a.m.

11 Before:

12 HON. PAUL A. CROTTY,

13 District Judge

14 APPEARANCES

15 GEOFFREY S. BERMAN
16 United States Attorney for the
17 Southern District of New York
18 MATTHEW LAROCHE
19 SIDHARDHA KAMARAJU
20 DAVID W. DENTON, JR.
21 Assistant United States Attorneys

22 FEDERAL DEFENDERS OF NEW YORK
23 Attorneys for Defendant
24 SABRINA P. SHROFF
25 EDWARD S. ZAS

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1 (In open court)

2 THE DEPUTY CLERK: This is the matter of docket no. 17
3 CR 548, United States of America v. Joshua Schulte.

4 Counsel for the government, please state your
5 appearance.

6 MR. LAROCHE: Good morning. Matt Laroche, Sid
7 Kamaraju and David Denton for the government. And with us at
8 counsel's table is Morgan Hurst, a paralegal at the U.S.
9 attorney's office.

10 THE COURT: Good morning.

11 MS. SHROFF: Good morning, your Honor. For
12 Mr. Schulte, Sabrina Shroff and Edward Zas. Also present at
13 counsel table is Achal Formando-Peiris, and of course
14 Mr. Schulte.

15 THE COURT: Mr. Schulte, how are you. All right.
16 We'll take up the issues I want to address in the final
17 pretrial conference, and any other matters you want to raise
18 we'll take up at the end of the pretrial conference.

19 With regard to the jury, how many alternates do the
20 parties suggest?

21 MR. LAROCHE: Your Honor, two or four would be fine
22 for the government.

23 THE COURT: Ms. Shroff?

24 MS. SHROFF: We have no objection.

25 THE COURT: Two or four?

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1 MS. SHROFF: Either is fine.

2 THE COURT: How long do you think the trial will be?

3 MR. LAROCHE: We estimate about a month.

4 THE COURT: Okay. We're going to have four alternates
5 then.

6 The peremptory challenges will be as set forth in the
7 Federal Rules of Criminal Procedure.

8 Now, have we received voir dire from the government?

9 MR. LAROCHE: Yes, your Honor.

10 THE COURT: Ms. Shroff, have we got it from you?

11 MS. SHROFF: Your Honor, the Court had asked us to
12 give you a jury questionnaire. I apologize, I have been
13 behind. I am going to try to get it to the Court by early
14 Monday.

15 THE COURT: Okay. Thank you.

16 Does either side want a preliminary questionnaire to
17 go to the jurors, the jury pool that's larger, so you'll be
18 dealing with kind of a prequalified class of jurors?

19 MR. LAROCHE: The government is not requesting that,
20 your Honor.

21 MS. SHROFF: Your Honor, I think there are several
22 issues in this case. But, I don't know if it would make more
23 sense to raise them preliminarily or not. I don't know what
24 the world's feeling is about sitting on a jury that's
25 classified information or --

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1 THE COURT: We'll take that up later.

2 MS. SHROFF: Okay. Or the CIA or leaker or
3 whistleblower. All of those issues seem to be hot topics
4 lately.

5 THE COURT: All right. I think I'll ask for 100
6 jurors and we'll make our selection from that jury array.

7 We have a public hearing that's scheduled for Monday
8 at 2 p.m. Ms. Shroff, you want to file something as well for
9 the conference we are having on Monday, the 27th?

10 MS. SHROFF: I don't think I should be the one filing
11 my own papers. I know that sounds kind of odd, but since I
12 have no power to derivatively classify a document, I
13 unfortunately -- that's why I wrote to the Court and asked that
14 the government should be ordered to file our papers in a
15 properly unredacted form. We do not believe they are
16 classified. But far be it for me to end up making that
17 decision.

18 THE COURT: Have you prepared the papers?

19 MS. SHROFF: We filed them with the Court at the
20 government's insistence. They were filed under seal.

21 THE COURT: Mr. Hartenstine?

22 MR. HARTENSTINE: Your Honor, I have discussed this
23 with the CIA. I believe we can undertake a classification
24 review and provide a redacted version to the Court that would
25 state Ms. Shroff's position.

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1 THE COURT: When?

2 MR. HARTENSTINE: Well, difficult for me to say. But,
3 well, I guess, yeah I would --

4 THE COURT: We are having a hearing on Monday,
5 2 o'clock.

6 MR. HARTENSTINE: Close of business today. Would
7 close of business today work?

8 THE COURT: Close of business today. All right.

9 MS. SHROFF: Your Honor, I just remind the Court, you
10 had issued an order, a memorandum and order. I think that you
11 had ordered the classification review to be done, and that
12 order to be placed on the docket. I don't think the CIA has
13 complied with the Court's directive yet. So I remind the Court
14 that your ruling still remains sealed.

15 THE COURT: All right.

16 MS. SHROFF: Or classified.

17 MR. HARTENSTINE: Your Honor, I'll work with the CIA
18 to resolve that issue.

19 THE COURT: Thank you. Now, with regard to the
20 demonstratives raised in the government's motion in limine,
21 have the parties worked out an agreement with respect to the
22 demonstratives?

23 MR. LAROCHE: Not yet, your Honor. What I was going
24 to propose today, it seems that the defense in their most
25 recent letter suggested they'd like to create their own videos.

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1 So I'd like to have an opportunity to confer with the defense
2 and see if we can come up with potential videos they'd like to
3 be created. And we can do the same thing for them so they'd
4 have the same opportunity to potentially create something they
5 want to show the jury.

6 That would be our proposal at this point. Otherwise I
7 think the videos themselves that we prepared a while ago I
8 think are properly admitted as demonstratives, and we want to
9 give them the opportunity to do the same thing.

10 THE COURT: Ms. Shroff.

11 MS. SHROFF: We are not going to work with the
12 prosecution to prepare exhibits for the trial. If I was
13 Mr. Schulte, I would take deep umbrage at that. We are going
14 to decline the offer. We thank the government for making it.
15 Mr. Schulte is entitled to have access in the same manner the
16 United States has had access to all of the forensic information
17 in this case.

18 Despite their best efforts, this case is not about a
19 small fight or a big fight at the CIA. The case is about
20 forensics. Without giving him access to the two servers, he
21 simply cannot properly defend the accusation. So we're not
22 going to be able to work out a compromise on this issue.

23 We have fully briefed the matter for the Court. We
24 briefed the matter after speaking with the forensic expert, and
25 that is the defense's position, your Honor.

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1 THE COURT: If it's fully briefed, we'll rule on it
2 then.

3 There comes a time when we are examining the jurors,
4 we ask them -- this is in a normal case -- we list the trial
5 witnesses and people whose names are going to be mentioned
6 during the trial, and we ask the jury if they know any of these
7 individuals.

8 How does the government propose to do this in light of
9 the number of CIA witnesses for both the government and for
10 Mr. Schulte?

11 MR. LAROCHE: We still intend to provide a list to the
12 jurors hard copy so they can review it and see if they are
13 familiar with any of the names on the list.

14 THE COURT: The real names?

15 MR. LAROCHE: Yes, your Honor.

16 MS. SHROFF: And then what?

17 MR. LAROCHE: Then, your Honor, we can take it up at
18 sidebar if anyone says they know anyone.

19 MS. SHROFF: And then what?

20 THE COURT: "Then what," what do you mean?

21 MS. SHROFF: Is that record kept from the press? Is
22 that record kept from the public? And then what happens when
23 that particular person testifies under a fake name?

24 THE COURT: A pseudonym.

25 MS. SHROFF: What's a pseudonym other than a -- I'm

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1 sorry, okay, let's go with pseudonym. What happens then? What
2 is the jury supposed to think? They asked me if I knew --
3 let's just pick a name. Pete Brush. And I said yes or I said
4 no. And then I never hear from Pete Brush during the trial?
5 What happens? I'm a juror, I'm completely confused. Unless
6 somebody is going to advise me that I am going to get a whole
7 list of names about which I am going to be asked, I'm never
8 going to see the names at a trial again. But from that
9 particular process, the jurors should draw no inference that
10 this is a issue about classification, national defense
11 information, and just keep an open mind, and proceed to trial.

12 The defense objects.

13 THE COURT: Mr. Laroche.

14 MR. LAROCHE: We have no objection to that type of
15 instruction, your Honor. Presumably, if someone knew someone
16 on that list of names, they wouldn't be a juror anyway.

17 THE COURT: These are the real names then.

18 MR. LAROCHE: That's correct, your Honor.

19 MS. SHROFF: I was being sarcastic. I'm sure
20 Mr. Laroche knows that. I do not think any juror could
21 possibly get that kind of instruction and suddenly think, okay,
22 none of this is highly sensitive. This is the first time I've
23 ever heard of a trial where the person whose names are given to
24 me in voir dire never ever testifies.

25 I was being sarcastic, and I'm sure Mr. Laroche knows

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1 this.

2 MR. LAROCHE: We can just give them a list and say
3 this is a list of people who may or may not come up at trial.
4 That's it. I think Ms. Shroff is making more out of this issue
5 than it is.

6 THE COURT: But, really, say, for example, it's --
7 I'll use my own name. I'm called as a juror. I am a CIA
8 employee. My real name is Paul Crotty, and I'll be identified
9 as Paul Crotty. But thereafter when I testify, I won't be Paul
10 Crotty. I'll be Thomas McMahon.

11 MR. LAROCHE: I guess my point, your Honor --

12 THE COURT: Does the juror know that? How will that
13 be communicated to the jury?

14 MR. LAROCHE: I don't think it has to be communicated.
15 The point of giving the names is to determine whether the
16 jurors know anyone who may potentially testify. If they don't
17 know anyone who may potentially testify, then it's not going to
18 matter whether that person is testifying under another name.
19 They don't know their real names anyway. At that point there
20 it is not going to be an issue with the jurors.

21 Our proposal will not be Paul Crotty, CIA employee.
22 They are not going to have that connection and be wondering why
23 didn't Paul Crotty CIA testify. Because we can present the
24 list as people who may or may not come up in this trial, and
25 give the list.

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1 THE COURT: The pseudonym wouldn't make any difference
2 because it's, as Ms. Shroff says, a fake name anyway.

3 MR. LAROCHE: That's right.

4 MS. SHROFF: Your Honor, what is the jury going to
5 think when it gets a list of witnesses, and let's just make it
6 easy, just say there are only five. Five witnesses. And they
7 never hear those people's names again. So none of those --

8 THE COURT: That happens quite frequently.

9 MS. SHROFF: None of the five were called. How does
10 it happen frequently? The name is mentioned somewhere along
11 the way.

12 THE COURT: You read a list of names to the jury, and
13 many times those names are not called as witnesses.

14 MS. SHROFF: Right. They may not be called as
15 witnesses, but they are certainly called into evidence. Say
16 that you have four people in a conspiracy, and you have a
17 snitch against the fourth person. That snitch may not be
18 called, but the snitch's name would come up in the testimony.

19 And we are not talking about a cooperating witness,
20 your Honor. We are talking about employees. We are talking
21 about a crime that happened in an office. How are we going to
22 go through a trial about CIA employees, without ever worrying
23 about having to refer to the name of the employees. There was
24 a meeting, was there not? Yes. How many people attended the
25 meeting? Six. Which six people attended the meeting?

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1 Are we going to have six pseudonyms? Are those six
2 real names never going to come up in evidence at all again?
3 That never happens in a trial. I agree with the Court, a
4 witness may not get called, but I have never seen a trial where
5 none of the names that are on the witness list ever appear in
6 the trial testimony.

7 THE COURT: What am I going to say about the
8 indictment? Am I going to say it involves Mr. Schulte who was
9 a CIA employee who is charged with stealing documents?

10 MR. LAROCHE: Yes, your Honor.

11 THE COURT: You are going to hear a lot of witnesses
12 from the CIA.

13 MR. LAROCHE: Yes, your Honor.

14 THE COURT: I assume that's what we'll tell them.

15 MR. LAROCHE: Yes, your Honor.

16 MS. SHROFF: I do just want to remind the Court that I
17 submitted a document which is called the contact card that
18 lists every individual's name. It's publicly distributed at
19 the CIA. Never marked classified. And those names are the
20 ones that the government insists, even now, in an Article III
21 court, to keep from the public, the press, and the jury during
22 a trial.

23 THE COURT: I am aware of that.

24 MS. SHROFF: Thank you, your Honor.

25 THE COURT: Now, there is a letter from Ms. Shroff of

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1 January 23 regarding the government's expert Mr. Leedom who is
2 going to be discussing application log files. Ms. Shroff, you
3 want the corresponding metadata; is that right?

4 MS. SHROFF: That is what our expert requested we
5 seek.

6 MR. LAROCHE: We have it with us today, your Honor.
7 We will provide it today. We have it with us.

8 THE COURT: When am I going to get the 3500 material
9 from the government?

10 MR. LAROCHE: Your Honor, we can give it to you now
11 electronically. I think we can also get a hard copy to the
12 Court by midweek. In that respect, I know Ms. Shroff has
13 raised some issues with printing, and we understand those
14 issues. We are dealing with them ourselves. I think we have a
15 solution on that where the government will be able to print
16 copies for everyone. We think we'll be able to get that done
17 by midweek. So the defense will also get copies that we will
18 provide.

19 We will also be able to do that for the exhibits. So
20 as soon as the exhibits get into an unclassified form, our plan
21 is to also print for the defense two copies of the exhibits, so
22 they don't have to be burdened with printing them. We can
23 handle that as well.

24 THE COURT: All right. You say midweek. Will it be
25 rolling production?

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1 MR. LAROCHE: We are largely complete with our 3500
2 except for interviews and meetings that are happening now. So
3 that will be largely a complete production, your Honor. It
4 will not have to be rolling, because most of it has been
5 produced already. So I think to the extent we have to
6 supplement after that, they will be smaller productions. We
7 can just add it --

8 THE COURT: When can you produce that?

9 MR. LAROCHE: We think we can get you the big
10 production by midweek, your Honor.

11 To be clear, we can give you the electronic production
12 today. We have that ready. If the Court wants hard copies,
13 which we are planning to do, we think we can get those all
14 printed by midweek.

15 THE COURT: That's why I was asking about the rolling
16 production. Do I have to wait until midweek to get anything?

17 MR. LAROCHE: If you want electronic copy --

18 THE COURT: I understand electronic. But I function
19 in a hard copy world.

20 MR. LAROCHE: Understood. As do we. Yes, midweek we
21 can give you the production. If the Court would like a rolling
22 production, we can start trying get that out this weekend.

23 THE COURT: Thank you.

24 MS. SHROFF: I just wanted the Court to have a heads
25 up. It is about 7,000 pages of classified --

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1 THE COURT: I did the math.

2 MS. SHROFF: Was I correct, your Honor?

3 THE COURT: I added 5,000 and 1,000 and it rounded up
4 to about 7,000, yes. And you have another 4 or 5,000 the other
5 day.

6 MS. SHROFF: That was the unclassified. The
7 unclassified is also a substantial amount. But in fairness to
8 the government, we have had some of it for a while, and I think
9 I noted that clearly in my letter. But we have a substantial
10 amount of new 3500 material, and I've written to you about
11 where we are in that process, your Honor. Thank you.

12 THE COURT: Now, with regard to the trial schedule for
13 the jury. I propose Mondays through Thursday we work from 9 in
14 the morning until 2:30 in the afternoon. And on Friday, from 9
15 to 12:30.

16 MS. SHROFF: We can't do Fridays, your Honor. Our
17 expert is not available. He is a professor at Columbia, and
18 he's told us all along he is not available on Fridays. And we
19 told the Court before we couldn't sit on Fridays.

20 THE COURT: All right. We'll meet on Monday through
21 Thursday from 9 to 3. We'll take a 15-minute break around
22 10:30, 11 o'clock, and another break but maybe a little bit
23 longer around 1 o'clock. But we'll work from 9 to 3, and
24 Fridays we'll be off.

25 Does the government have a proposal with respect to a

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1 glossary or a key that they are going to give --

2 MR. LAROCHE: Yes, your Honor.

3 THE COURT: -- to the Court?

4 And do you plan on giving it to the jury as well?

5 MR. LAROCHE: Yes, your Honor. No, we would not give
6 that to the jury. It would only be necessary for the witnesses
7 who are testifying to be able to have a key in front of them,
8 so if there was someone who was testifying under a pseudonym
9 they could refer to it, so they don't refer to them by their
10 true name. That would be our proposal, your Honor.

11 THE COURT: What about the all the initials that you
12 see in the documents about the organization, the structure of
13 the CIA. The CCI, the OSB, the NOD, the list just goes on and
14 on forever. The acronyms. Do you have a proposal there?

15 MR. LAROCHE: We can do a glossary for that as well,
16 your Honor.

17 THE COURT: All right. I'll give you an update on
18 several motions that are pending before me.

19 With regard to the defense's motion to reconsider my
20 ruling on the expert Mr. Rosenzweig, I have an order that I
21 will enter when I get back upstairs. But the application by
22 Mr. Schulte to reconsider the Rosenzweig decision is denied.

23 With regard to the government's letter of January 21,
24 dealing with the notebooks and the malware article. I have
25 Ms. Shroff's letter of January 23, and while this is very

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1 tardy, I am going to grant Ms. Shroff's request that she be
2 allowed to file a response on the evidentiary questions raised
3 by the government's letter. Ms. Shroff says that she wants
4 January 28. I'm going to set Monday, January 27, at 2 o'clock,
5 and ask for the government's response to Ms. Shroff's letter of
6 January 27 at 2 o'clock by close of business on Tuesday, the
7 28th.

8 That takes care of the 18-page letter of January 21.

9 I have two letters from Mr. Schulte. The first
10 letter, dated January 2, it was postmarked the 13th of January,
11 and then it was routed to the pro se office on January 17. It
12 didn't arrive in chambers until January 19 or 20. I have a
13 second letter from Mr. Schulte of January 21 starting out, "I
14 again write to the Court regarding Mr. Branden who was assigned
15 to my case on October 28." And Mr. Schulte believes that
16 Mr. Branden has not been as diligent as he should have been and
17 he asks for a different lawyer.

18 I think giving Mr. Schulte a different lawyer now at
19 this particular stage wouldn't do much good. We are on the eve
20 of trial. I will talk to Mr. Branden and have him clear his
21 schedule so he can render assistance to Mr. Schulte and be of
22 aid and assistance to Ms. Shroff. I'll do that today.

23 Ms. Shroff, could you tell me about your letter about
24 the Sometimes Chats, the letter of January 23?

25 MS. SHROFF: Your Honor, the Sametime Chats?

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1 THE COURT: Sametime Chats.

2 MS. SHROFF: Your Honor, we have, and if I get it
3 wrong I'm sure the government will correct me. I do not think
4 we've received the bulk of the Sametime Chats before. If I'm
5 wrong -- am I wrong?

6 (Counsel conferring)

7 MS. SHROFF: So for Mr. Schulte's Sametime Chat, we
8 had asked for Sametime Chats all the way from the time he was
9 first employed, and we were not given those. We were given a
10 specific range closer to the time in the indictment.
11 Subsequently, during the 3500 production, we received some of
12 the Sametime Chats.

13 The way they are presented to us is they are cropped,
14 so we do not quite have full context for what has happened
15 moments before or moments after. And the context in this
16 particular case is relevant. So, for example, I think the
17 government has publicly in its motion in limine talked about
18 the memo of warning or the letter of warning. The Sametime
19 Chats on those days, what was going on with management, how
20 they planned it, what they were doing, all of that is relevant
21 to us. We don't have it. They do.

22 THE COURT: Mr. Laroche?

23 MR. LAROCHE: I agree it's all relevant, your Honor.
24 We aimed to, and I believe we did, produce all of the relevant
25 communications related to that employee dispute, whether it be

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1 regarding e-mails that were sent between management about
2 Mr. Schulte or related to Sametime Chats. We're also
3 continuing to meet with our witnesses and have asked them
4 whether there is anything additional related to that. To the
5 extent it comes up, we will produce it.

6 THE COURT: So in answer to Ms. Shroff, you say you've
7 produced the documents?

8 MR. LAROCHE: Yes, your Honor.

9 MS. SHROFF: You are going to get the 3500 material.
10 I leave it to chambers. If the government's position is that
11 they've actually produced to us information in a way we can
12 actually use at trial, I invite the Court to take a look at it.

13 THE COURT: All right.

14 MS. SHROFF: In addition, the 3500 material that has
15 been presented to us for the FBI witnesses, which I think is
16 literally in the hundreds and hundreds of pages, all of these,
17 all of these e-mail exchanges are retyped. Many of these
18 e-mail exchanges are retyped, and yet they are cropped for us.
19 They have this information. There is nothing sensitive --

20 THE COURT: What about the cropping, Mr. Laroche?

21 MR. LAROCHE: I am not sure what she's referring to,
22 your Honor.

23 MS. SHROFF: I'll tell you what I am referring to.

24 THE COURT: It won't do any good to tell me. What you
25 really ought to do is take it up with Mr. Laroche. If you are

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1 not going to be satisfied with what Mr. Laroche says, then come
2 back. We'll be together on Monday.

3 MS. SHROFF: We have been dissatisfied with what
4 Mr. Laroche says. We've asked them for this ad nauseam for
5 almost a year. The same way we have asked for Mr. Schulte's
6 personnel file. It is his personnel file. They have his
7 personnel files. I know they have it because I read it in -- I
8 think his name is Schlesinger's 3500. That's the FBI agent.
9 They have it. It's his personnel file. Why wouldn't I get it?

10 THE COURT: Did you get it?

11 MS. SHROFF: No.

12 THE COURT: I thought you just said you did get it.

13 MS. SHROFF: I said why wouldn't I get it. I have
14 asked them for it for more than a year.

15 I apologize for the frustration in my voice, your
16 Honor, but between not having a co-counsel that has reviewed
17 any 3500, any discovery, and a trial date a week away.

18 THE COURT: Has the personnel file been produced,
19 Mr. Laroche?

20 MR. LAROCHE: Yes, your Honor.

21 MS. SHROFF: Mr. Schulte's personnel file -- if the
22 government believes they've produced to us a personnel file for
23 Mr. Schulte from the CIA, I ask the Court to tell them to give
24 us the Bates numbers, because we do not have that kind of a
25 personnel file that they are referring to.

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1 MR. LAROCHE: We'll do that, and also re-provide the
2 letter that I believe also went to the Court regarding the
3 personnel file.

4 THE COURT: All right. On the defense's motion about
5 the task force report, I am going to grant that motion in part.
6 I've reviewed the report, and I am going to direct the
7 government to produce the following portions of the report.
8 This should have been disclosed in connection with the Section
9 4 order.

10 On page one of the task force report, redacted
11 paragraph 4 should be produced. Page 4, redacted paragraph 3
12 should be produced. Page 7, redacted paragraph 8 should be
13 produced. Page 12, redacted recommendation A5 heading should
14 be produced.

15 I've read the redacted portions again, and I find that
16 it contains forward-looking statements and hypotheticals about
17 future harm, which may or may not have occurred, but is not
18 relevant information.

19 So with the exceptions that I've just noted on page 1,
20 4, 7, and 12, the application is denied. It is granted as to
21 those four instances.

22 With regard to Ms. Shroff's letter of January 23, with
23 regard to the government's submission of January 21 regarding
24 the blue notebooks and the red notebooks and the malware, I've
25 already told you that I've given Ms. Shroff until Monday, the

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1 27th of January, at 2 p.m., to file a response, which she
2 requested. That's about Rosenzweig.

3 We'll set Monday at 2 o'clock for a public hearing on
4 the -- I checked the docket sheet this morning, and the order
5 is entered on January 21. The government was ordered to file a
6 public version of its proposal for courtroom closure, and that
7 letter was filed on January 23, it's docket no. 263. Okay.

8 That takes care of what I want to take care of. Is
9 there anything else you want to raise now, Mr. Laroche and
10 Ms. Shroff?

11 MR. LAROCHE: Not from the government, your Honor.

12 THE COURT: Mr. Zas.

13 MR. ZAS: We had submitted a letter, I don't remember
14 the exact date, because there have been so many letters, but it
15 has to do with the names and addresses of CIA witnesses.

16 THE COURT: Yes.

17 MR. ZAS: We understand from CISO Hartenstein that we
18 are precluded -- we are not able to use the names or addresses
19 basically for any purpose. We can't do a Google search of a
20 witness, we can't have an investigator go and investigate the
21 person.

22 And as we said in our letter, we think that denies us
23 two Constitutional rights. One is the confrontation right, to
24 prepare for the cross-examination of these witnesses, and the
25 other is effective assistance because we have a duty to do a

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1 reasonable investigation. Trial is a week from Monday. We
2 don't see how we can do a reasonable investigation of witnesses
3 we can't investigate.

4 THE COURT: What's the date of the letter?

5 MS. SHROFF: I think it is January 21, your Honor.

6 THE COURT: Is it January 17?

7 MR. ZAS: I think so, your Honor.

8 THE COURT: Is that the letter in which you cited to
9 Smith v. Illinois, 390 U.S.?

10 MR. ZAS: That's exactly it, yes, sir.

11 THE COURT: All right. Mr. Laroche, what's the
12 government's position?

13 MR. LAROCHE: Your Honor, the government understands,
14 we are not objecting to them conducting an investigation. I
15 think what we would object to is connecting them to the agency
16 in order to conduct that investigation.

17 For example, if they wanted to search for someone's
18 name online, it would be the difference between putting their
19 name in alone, and putting their name in and trying to connect
20 them in that their search with the agency.

21 THE COURT: You mean you can ask for Joe Smith, but
22 you can't ask for Joe Smith at the CIA?

23 MR. LAROCHE: That's correct, your Honor.

24 THE COURT: How do you know it is the Joe Smith at the
25 CIA?

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1 MR. LAROCHE: They have a substantial amount of
2 information about these folks, your Honor. So, they would know
3 if that is the right person that they are searching for based
4 on the wealth of information that they've been provided.

5 THE COURT: Excuse me, how would they know? Through
6 other information, you mean?

7 MR. LAROCHE: That's right, your Honor. They've been
8 provided substantial amount of information from these folks for
9 a very long time. Witness interviews with the CIA were
10 produced in December 2018. So they've had information about
11 these key witnesses for a very long time. They know a lot
12 about them from that investigation.

13 To the extent they search for that in that way, they
14 should know who they are referring to.

15 MS. SHROFF: There would be no way to search for those
16 individual -- you can't take their names out. We are not
17 allowed to take the names out. Even for an ex-CIA employee
18 that we contacted, the CISO reached out to us and told us to
19 stop. So I don't know what Mr. Laroche is talking about.

20 If the CIA employee's name, for example, is Paul
21 Crotty, I'm not allowed to take the name Paul Crotty, go
22 outside to my computer that has e-mail -- I mean internet
23 access, and put in the name Paul Crotty, because the name,
24 according to the CISO to us, is classified, whether we put it
25 next to the CIA or not.

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1 And frankly, it is because they gave us these 302s,
2 and it is because the 302s are written in a particular way,
3 that we need to do the investigation. And when we are not able
4 to do the investigation, we asked for personnel files of these
5 individuals, which again the government did not give to us.
6 Because perhaps their bad acts or their problems would be
7 reflected in the personnel file that would even somewhat make
8 up for the lack of basic investigation by us.

9 THE COURT: Has the government responded to the letter
10 of January 17?

11 MR. LAROCHE: No, your Honor.

12 THE COURT: Can I get your response?

13 MR. LAROCHE: Yes, your Honor.

14 THE COURT: Can you give me a date?

15 MR. LAROCHE: Monday, your Honor?

16 THE COURT: All right. Mr. Hartenstine, have you
17 worked with this, looked at this request?

18 MR. HARTENSTINE: I have, your Honor. And I think,
19 without knowing specifically what defense counsel sought about
20 these individuals, it was hard for me to give any other advice
21 than not to undertake social media or --

22 THE COURT: Did you read the January 17 letter?

23 MR. HARTENSTINE: I did, your Honor.

24 THE COURT: Why can't you respond? Why can't the CIA
25 respond to that?

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1 MR. HARTENSTINE: I believe they can, your Honor.
2 They have not. I can seek guidance from CIA on behalf of
3 defense counsel.

4 THE COURT: All right. I'll get the government's
5 response on Monday, Mr. Laroche?

6 MR. LAROCHE: Yes, your Honor. Your Honor, just to be
7 clear, we have spoken to the agency about this, and I think our
8 position is largely what I just said. So it is not the
9 agency's fault for not responding earlier. It's on us, and
10 we'll provide the response by Monday.

11 THE COURT: Okay. Anything else, Mr. Zas?

12 MS. SHROFF: Your Honor, could we just have a minute
13 more?

14 THE COURT: Yes.

15 MS. SHROFF: Thank you.

16 (Pause)

17 (Counsel conferring)

18 MS. SHROFF: Your Honor, I've conferred with the
19 government, and could we have a brief sidebar?

20 THE COURT: Yes.

21 (Pages 26-29 sealed)

22 (Continued on next page)

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1 (In open court)

2 THE COURT: Anything else?

3 MR. LAROCHE: Not from the government, your Honor.

4 THE COURT: Ms. Shroff, Mr. Zas?

5 MS. SHROFF: No, your Honor. Thank you.

6 THE COURT: See you on Monday at 2 p.m. Thank you
7 very much.

8 (Adjourned)

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